

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-430

13 **JAY NEAL ROWTON**

14 6904 Castlerock Drive
15 Texarkana, AR 71854

DEFAULT DECISION AND ORDER

16 Registered Nurse License No. 577075

[Gov. Code, §11520]

17 Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about November 27, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs, filed Accusation No. 2013-430 against Jay Neal Rowton ("Respondent")
23 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

24 2. On or about February 7, 2001, the Board of Registered Nursing ("Board") issued
25 Registered Nurse License No. 577075 to Respondent. The Registered Nurse License expired on
26 November 30, 2004, and has not been renewed.

27 ///

1 3. On or about November 27, 2012, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 2013-430, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
5 Code section 136, is required to be reported and maintained with the Board. Respondent's
6 address of record was and is:

7 6904 Castlerock Drive
8 Texarkana, AR 71854.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about December 5, 2012, the signed Certified Mailing Receipt was returned to
13 the Board with December 1, 2012, as the date of delivery.

14 6. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 2013-430.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 2013-430, finds
2 that the charges and allegations in Accusation No. 2013-430, are separately and severally, found
3 to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$782.50 as of January 2, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Jay Neal Rowton has subjected
9 his Registered Nurse License No. 577075 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
12 Nurse License based upon the following violations alleged in the Accusation which are supported
13 by the evidence contained in the Default Decision Evidence Packet in this case.

14 a. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of
15 the Code in that on or about October 14, 2004, Respondent was disciplined by the Arkansas State
16 Board of Nursing ("Arkansas Board"). Specifically, the Arkansas Board issued an Order placing
17 Respondent's registered nurse license in that state on probation for a period of 1 year, with terms
18 and conditions. The circumstances underlying the disciplinary action by the Arkansas Board are
19 that Respondent failed to correctly document and properly assess patients when administering
20 controlled substances. Respondent's employer also questioned his judgment when he
21 administered 4 different types of pain medication over a 4 hour period that ended with the patient
22 having a fall. Respondent initially refused a drug screen but later submitted to a drug screen
23 which tested positive for opiates at the facility. The Respondent admitted to taking Restoril
24 (prescribed to his wife) prior to the drug screen. The disciplinary action is described in more
25 particularity in Accusation No. 2013-430, hereby incorporated by reference.

26 b. On or about June 14, 2011, the Texas Board of Nursing ("Texas Board") ratified and
27 adopted the Agreed Order signed on May 26, 2011, by Respondent in which the parties agreed
28 that Respondent received the sanction of a warning with stipulations in the disciplinary matter

1 entitled *In the Matter of Registered Nurse License Number 661547 and Nurse Licensure Compact*
2 *Privilege Associated with Arkansas License Number R65339 issued to Jay Neal Rowton*. The
3 circumstances underlying the disciplinary action by the Texas Board are that on or about
4 September 8, 2010, while holding a license as a registered nurse in the State of Texas,
5 Respondent's license to practice professional nursing in Arkansas was placed on probation with
6 stipulations for a period of 3 years, by the Arkansas Board based upon Respondent's refusal to
7 submit to drug testing for cause, and for removing multiple Meperidine injections for patients
8 without documentation of administration. The disciplinary action is described in more
9 particularity in Accusation No. 2013-430, hereby incorporated by reference.

10 c. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of
11 the Code in that on or about September 8, 2010, the Arkansas Board issued a Consent Agreement
12 in which the Arkansas Board made findings of fact, conclusions of law and issued an order
13 placing Respondent's license to practice nursing in that state on probation for a period of 3 years,
14 with terms and conditions in the disciplinary matter entitled *In the Matter of Jay Neal Rowton, RN*
15 *License No. R65339*. The circumstances underlying the disciplinary action by the Arkansas
16 Board are that on or about February 17, 2010, Respondent was terminated from Wadley Regional
17 Medical Center in Texarkana, Texas, for refusing to submit to drug testing for cause as required
18 by hospital policy. The Respondent's controlled substance retrieval for Wednesday, February 17,
19 2010, was reviewed and found that he removed multiple Meperidine injections for patients with
20 no documentation of administration. The Arkansas Board also found that the Respondent was
21 previously disciplined by the Arkansas Board in 2004. On or about April 25, 2012, the Arkansas
22 Board accepted the voluntary surrender of Respondent's privilege to practice in that state. The
23 disciplinary action is described in more particularity in Accusation No. 2013-430, hereby
24 incorporated by reference.

25 d. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
26 Code on the grounds of unprofessional conduct in that Respondent failed to correctly document
27 and properly assess patients when administering controlled substances, tested positive for opiates
28 in a drug screen, took Restoril prior to the drug screen and removed multiple Meperidine

1 injections for patients with no documentation of administration. The conduct is described in more
2 particularity in Accusation No. 2013-430, hereby incorporated by reference.

3 e. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
4 Code as defined in section 2762, subdivision (a) of the Code in that Respondent obtained or
5 possessed Meperidine, a schedule II controlled substance and dangerous drug, in violation of the
6 law. The conduct is described in more particularity in Accusation No. 2013-430, hereby
7 incorporated by reference.

8 f. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
9 Code as defined in section 2762, subdivision (e) of the Code in that Respondent made grossly
10 incorrect entries in hospital, patient and other records pertaining to Meperidine and other
11 controlled substances. The conduct is described in more particularity in Accusation No. 2013-
12 430, hereby incorporated by reference.

13 g. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the
14 Code in that Respondent violated provisions of the Nursing Practice Act. The violations are
15 described in more particularity in Accusation No. 2013-430, hereby incorporated by reference.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS SO ORDERED that Registered Nurse License No. 577075, heretofore issued to Respondent Jay Neal Rowton, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 2, 2013.

It is so ORDERED APRIL 2, 2013.


FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

51214063.DOC
DOJ Matter ID: LA2012508132

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2013 - 430

11 **JAY NEAL ROWTON**

12 6904 Castlerock Drive
13 Texarkana, AR 71854

A C C U S A T I O N

14 Registered Nurse License No. 577075

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about February 7, 2001, the Board of Registered Nursing issued Registered
23 Nurse License Number 577075 to Jay Neal Rowton ("Respondent"). The Registered Nurse
24 License expired on November 30, 2004, and has not been renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

1 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
2 any licensee, including a licensee holding a temporary or an inactive license, for any reason
3 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
5 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
6 disciplinary action during the period within which the license may be renewed, restored, reissued
7 or reinstated.

8 6. Section 2764 of the Code also provides, in pertinent part, that the expiration of a
9 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
10 against the licensee or to render a decision imposing discipline on the license. Section 2811(b) of
11 the Code provides, in pertinent part, that the Board may renew an expired license at any time
12 within eight years after the expiration.

13 7. California Code of Regulations, title 16, section 1419.3 provides:

14 “In the event a licensee does not renew his/her license as provided in
15 Section 2811 of the code, the license expires. A licensee renewing pursuant to this
16 section shall furnish a full set of fingerprints as required by and set out in section
1419(b) as a condition of renewal.

17 (a) A licensee may renew a license that has not been expired for more
18 than eight years by paying the renewal and penalty fees as specified in Section 1417
and providing evidence of 30 hours of continuing education taken within the prior
two-year period.

19 (b) A licensee may renew a license that has been expired for more than
20 eight years by paying the renewal and penalty fees specified in Section 1417 and
21 providing evidence that he or she holds a current valid active and clear registered
nurse license in another state, a United States territory, or Canada, or by passing the
Board's current examination for licensure.”

22 8. Section 2761 of the Code states, in pertinent part:

23 “The board may take disciplinary action against a certified or licensed
24 nurse or deny an application for a certificate or license for any of the following:

25 (a) Unprofessional conduct, which includes, but is not limited to, the
26 following:

26 ...

27 (4) Denial of licensure, revocation, suspension, restriction, or any other
28 disciplinary action against a health care professional license or certificate by another
state or territory of the United States, by any other government agency, or by another

California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it."

9. Section 2762 of the Code states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

DRUG DEFINITIONS

10. Meperidine is a schedule II controlled substance pursuant to Health and Safety Code section 11055 and is a dangerous drug pursuant to section 4022 of the Code.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by Other Jurisdiction)

12. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of the Code in that Respondent was disciplined by the Texas Board of Nursing ("Texas Board") and by the Arkansas State Board of Nursing ("Arkansas Board"), as follows:

1 13. On or about October 14, 2004, the Arkansas Board issued an Order placing
2 Respondent's registered nurse license in that state on probation for a period of 1 year, with terms
3 and conditions in the disciplinary matter entitled *In the Matter of: Jay Neal Rowton RN License*
4 *No. R65339*. The circumstances underlying the disciplinary action by the Arkansas Board are
5 that Respondent failed to correctly document and properly assess patients when administering
6 controlled substances. Respondent's employer also questioned his judgment when he
7 administered 4 different types of pain medication over a 4 hour period that ended with the patient
8 having a fall. Respondent initially refused a drug screen but later submitted to a drug screen
9 which tested positive for opiates at the facility.¹ The Respondent admitted to taking Restoril
10 (prescribed to his wife) prior to the drug screen.

11 14. On or about September 8, 2010, the Arkansas Board issued a Consent Agreement in
12 which the Arkansas Board made findings of fact, conclusions of law and issued an order placing
13 Respondent's license to practice nursing in that state on probation for a period of 3 years, with
14 terms and conditions in the disciplinary matter entitled *In the Matter of Jay Neal Rowton, RN*
15 *License No. R65339*. The circumstances underlying the disciplinary action by the Arkansas
16 Board are that on or about February 17, 2010, Respondent was terminated from Wadley Regional
17 Medical Center in Texarkana, Texas, for refusing to submit to drug testing for cause as required
18 by hospital policy. The Respondent's controlled substance retrieval for Wednesday, February 17,
19 2010, was reviewed and found that he removed multiple Meperidine injections for patients with
20 no documentation of administration. The Arkansas Board also found that the Respondent was
21 previously disciplined by the Arkansas Board in 2004. On or about April 25, 2012, the Arkansas
22 Board accepted the voluntary surrender of Respondent's privilege to practice in that state.

23 15. On or about June 14, 2011, the Texas Board ratified and adopted the Agreed Order
24 signed on May 26, 2011, by Respondent in which the parties agreed that Respondent received the
25 sanction of a warning with stipulations in the disciplinary matter entitled *In the Matter of*
26 *Registered Nurse License Number 661547 and Nurse Licensure Compact Privilege Associated*

27 _____
28 ¹ The confirmatory test was negative.

1 with Arkansas License Number R65339 issued to Jay Neal Rowton. The circumstances
2 underlying the disciplinary action by the Texas Board are that on or about September 8, 2010,
3 while holding a license as a registered nurse in the State of Texas, Respondent's license to
4 practice professional nursing in Arkansas was placed on probation with stipulations for a period
5 of 3 years, by the Arkansas Board based upon Respondent's refusal to submit to drug testing for
6 cause, and for removing multiple Meperidine injections for patients without documentation of
7 administration. The disciplinary action by the Arkansas Board is described in more particularity
8 in paragraph 14 above, inclusive and hereby incorporated by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 16. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
12 Code on the grounds of unprofessional conduct in that Respondent failed to correctly document
13 and properly assess patients when administering controlled substances, tested positive for opiates
14 in a drug screen, took Restoril prior to the drug screen and removed multiple Meperidine
15 injections for patients with no documentation of administration. The conduct is described in more
16 particularity in paragraphs 13 and 14 above, inclusive and hereby incorporated by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Drug Related Transgressions)**

19 17. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
20 Code as defined in section 2762, subdivision (a) of the Code in that Respondent obtained or
21 possessed Meperidine, a schedule II controlled substance and dangerous drug, in violation of the
22 law. The transgression is described in more particularity in paragraph 14 above, inclusive and
23 hereby incorporated by reference.

24 18. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
25 Code as defined in section 2762, subdivision (e) of the Code in that Respondent made grossly
26 incorrect entries in hospital, patient and other records pertaining to Meperidine and other
27 controlled substances. The transgressions are described in more particularity in paragraphs 13
28 and 14 above, inclusive and hereby incorporated by reference.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violation of Nursing Practice Act)**

3 19. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the
4 Code in that Respondent violated provisions of the Nursing Practice Act. The violations are
5 described in more particularity in paragraphs 12 through 18 above, inclusive and hereby
6 incorporated by reference.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 577075, issued to Jay
11 Neal Rowton;

12 2. Ordering Jay Neal Rowton to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.
16
17

18 DATED: November 27, 2012

19 *for* Stacie Bean
20 LOUISE R. BAILEY, M.ED., RN
21 Executive Officer
22 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

23 LA2012508132
24 51193032.doc
25
26
27
28